IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 646 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARESH RAMANLAL AMIN CLOSE FRIEND OF DETENU RAMESH J SHAH
Versus
STATE OF GUJARAT

Appearance:
MR RS SANJANWALA for Petitioner
MR KT DAVE, ADDL PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE M.R.CALLA

Date of decision: 31/03/2000

ORAL JUDGEMENT (Per Patel, J.)

This matter has been placed before this Court in

view of the order passed by the Honourable the Chief Justice as a Division Bench hearing this matter, on 22.6.1994, expressed an opinion that it is desirable that the important questions raised are decided by a larger Bench. The questions which are referred are as under:-

"(1). What will be the scope and sphere of operation of Article 22 (5) of the Constitution of India when Sec. 6 of the PASA Act is applicable?

(2). When one ground of detention is not existent as it is vague whether it would affect the right to make representation under Article 22 (5) of the Constitution of India?"

2. The detenu was detained under the provisions of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short, PASA Act) by an order made by District Magistrate, vide Annexure 'A' on 9.6.1993. Grounds of detention were served vide Annexure 'C' dated 9.6.1993. Against the said detention order, the aforesaid petition has been filed by a friend of the petitioner.

3. The questions referred to hereinabove, in our opinion, are concluded by the decision of the Apex Court in the case of ATTORNEY GENERAL FOR INDIA vs. AMRATLAL PRAJIVANDAS reported in AIR 1994 SC 2179.

4. The Apex Court considered the language of Section 5.A of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short, COFEPOSA Act) and held that there are as many orders of detention as there are grounds. Thus, on each ground there is a separate order. Section 5.A of COFEPOSA Act reads as under:-

"5.A. Where a person has been detained in pursuance of an order of detention under sub-section (1) of Section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly-

(a). such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are -

(i) vague
(ii) non-existent

(iii) not-relevant
(iv) not connected or not proximately connected with such person, or,
(v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or the officer making such order would have been satisfied as provided in sub-section (1) of section 3 with reference to the remaining ground or grounds and made the order of detention;

(b). the Government or the officer making the order of detention shall be deemed to have made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds".

Section 6 of the PASA Act reads as under:-

"6. Where a person has been detained in pursuance of an order of detention under section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each ground and accordingly-

(a). such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are -

(i) vague
(ii) non-existent
(iii) not-relevant
(iv) not connected or not proximately connected with such person, or,
(v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or the officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;

(b). the Government or the officer making the

order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds.

4.1 Reading the language, it is clear that section 6 of the PASA Act is parimateria to Sec. 5.A of the COFEPOSA Act.

5. After considering various judgments of the Apex Court and the decision of other Courts, in paragraph 48 the Apex Court has held as under:-

"48. Now, take a case, where three orders of detention are made against the same person under COFEPOSA. Each of the orders is based upon only one ground which is supplied to the detenu. It is found that the ground of detention in support of two of such orders is either vague or irrelevant. But the ground in support of the third order is relevant, definite and proximate. In such a case, while the first two orders would be quashed, the third order would stand. This is precisely what the first part (the main part) of Section 5-A seeks to do. Where the order of detention is based on more than one ground, the Section creates a legal fiction, viz. it must be deemed that there are as many orders of detention as there are grounds which means that each of such orders is an independent order. The result is the same as the one in the illustration given by us hereinabove. The second part of it is merely clarificatory and explanatory, which is evident from the fact that it begins with the word "accordingly" - apart from the fact that it is joined to the first part by the word "and". In such a situation, we are unable to see how can the section be characterised as inconsistent with Article 22 (5). Had there been no first part, and had the section consisted only of the second part, one can understand the contention that the section is in the teeth of Article 22 (5) as interpreted by this Court - this was indeed the situation in K. Yadigiri Reddy vs. The Commissioner of Police, ILR (1972) Andh. Pra 1025 as we shall presently indicate. it is difficult to conceive any inconsistency or conflict between Article 22 (5) and the first the main part of Section 5-A. The Parliament is competent to create a legal fiction and it did so

> in this case. Article 22 (5) does not in terms or otherwise prohibit making of more than one order simultaneously against the same person, on different grounds. No decision saying so has been brought to our notice. Be that as it may, we do not see why the Parliament is not competent to say, by creating a legal fiction, that where an order of detention is made on more than one ground, it must be deemed that there are as many orders of detention as there are grounds. If this creation of a legal fiction is competent, then no question of any inconsistency between the section and Article 22 (5) can arise."

6. So far as the present petition is concerned, the detenu was detained under the provisions contained in the PASA Act. Section 6 of PASA Act is almost identical to section 5.A of the COFEPOSA Act which was under consideration by the Apex Court in the aforesaid case.

7. In view of this, we find that section 6 of the PASA Act cannot be held to be inconsistent with the provisions contained in Article 22 (5) of the Constitution of India and applicability of Sec. 6 of PASA Act does not impinge upon the scope and sphere of operation of Art. 22 (5) of the Constitution of India. The first question is answered accordingly.

8. So far as the second question is concerned, we hold that one ground of detention which is non-existent as it is vague, would not affect the right to make representation under Article 22 (5) of the Constitution of India. The second question is answered accordingly.

9. As we have answered the questions, ordinarily, the matter would be required to be sent back to the appropriate Bench. However, in the present case, the petition has become infructuous. We, therefore, dispose of this petition as having become infructuous. Rule is discharged.

(B.C. PATEL, J.)

(R.K. ABICHANDANI, J.)

csm./ (M.R. CALLA, J.)